



U.S. Department of the Interior
Bureau of Land Management

Prineville District Office
185 East 4th Street, P.O. Box 550,
Prineville, Oregon 97754

ONRC Action v. Bureau of Land Management
Civil Case No. 96-00422-HA
Administrative Record 30E

February 7, 1995



Land Tenure Adjustment

Proposed Plan Amendment and Finding of No Significant Impact for the John Day Resource Management Plan

As the Nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering the wisest use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historical places, and providing for the enjoyment of life through outdoor recreation. The Department assesses our energy and mineral resources and works to assure that their development is in the best interest of all our people. The Department also has a major responsibility for American Indian reservation communities and for people who live in Island Territories under US administration.

BLM/OR/WA/PT-95/011+1792



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Prineville District Office
185 East 4th Street, P.O. Box 550
Prineville, Oregon 97754

February 7, 1995

Dear Interested Citizen:

Enclosed for your information is the Bureau of Land Management's (**BLM's**) Proposed Decision and Finding of No Significant Impact for the John Day Resource Management Plan (RMP) Amendment and Environmental Assessment (EA) for land tenure adjustments.

The proposed decision is to amend the John Day RMP to divide the affected public land into three zones which direct and define future BLM actions regarding retention or disposal through exchange or sale. The zones were modified after the first public comment period in February and March of 1994 to reflect citizen input. The decision identifies zones of potential land tenure adjustments within the planning area. Based on these guidelines, future land tenure adjustment proposals would only be completed if a determination was made that the action would be in the public interest.

Also enclosed is a summary of the public comments received on the plan amendment and **EA** in the October and November, 1994 comment period and **BLM's** response to those comments.

We appreciate the comments and cooperation of those who participated in this planning process. The existing land use plan will be amended as per the attached decision. Questions on the decision may be sent to:

District Manager
Prineville District Office
Bureau of Land Management
P.O. Box 550
Prineville, Oregon 97754.

The planning document contains actions that require two separate protest periods. A 30 day protest period is required (under 43 CFR 1610.5-2) for the plan amendment and a 45 day protest period is required (under 43 CFR Part 4) for the proposed land exchanges described in the plan. To save time and reduce duplication of information, the two comment periods will commence simultaneously on February 7, 1995. The protest procedure for each action is described below.

Plan Protest Procedure

The planning process includes an opportunity for administrative review via a plan protest to the BLM Director if you believe the approval of any provision of this proposed planning amendment would be in error. (See 43 CFR 1610.5-2, available at the Prineville District Office.) Careful adherence to these guidelines will assist in preparing a protest that will assure the greatest consideration to your point **of view**.

Only those persons or organizations who participated in the planning process leading to this plan amendment may protest. If our records indicate that you had no involvement in any stage in the preparation of this proposed planning amendment, your protest will be dismissed without further review.

A protesting party may raise only those issues which he or she submitted for the record during the planning process. The period for filing a plan protest begins on February 7, 1995 and is also being announced through a Notice of Availability of the proposed land use plan amendment in the Blue Mountain Eagle and Central Oregonian newspapers. The protest period extends for 30 days and will close on March 9, 1995. There is no provision for any extension of time. To be considered **"timely"**, your protest must be postmarked no later than the last day of the protest period. Also, although not a requirement, we suggest that you send your protest by certified mail, return receipt requested.

Protests must be filed in writing to:

Director, Bureau of Land Management, US Department of
Interior
Resource Planning (480)
P.O. Box 65775
Washington, D.C. 20235

In order to be considered complete, your protest must contain, at a minimum, the following information:

1. The name, mailing address, telephone number and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts of the planning amendment being protested. To the extent possible, this should be done by referencing specific pages, paragraphs, sections, etc. included in the document.
4. A copy of all documents addressing the issue or issues that you submitted during the planning process or a reference to the date the issue or issues were discussed by you for the record.

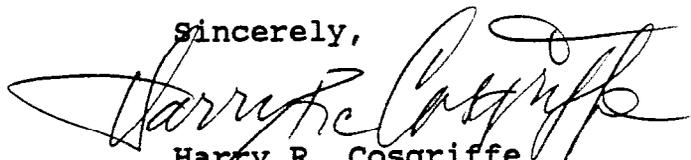
5. A concise statement explaining why the BLM Oregon State Director's decision is believed to be incorrect. This is a critical part of your protest. Take care to document all relevant facts. As much as possible, reference or cite the planning and environmental analysis documents. A protest which merely expresses disagreement with the State Director's proposed decision, without any data will not provide us with the benefit of your information and insight. In this case, the Director's review will be based on the existing analysis and supporting data.

Protest Procedure for the **Proposed Land Exchanges**

The protest procedure for the specific proposed land exchanges proposed in the plan is less formal and anyone may protest by delivering a written protest to the address below, if done so within the 45 day comment period. The period for filing a protest begins when the Notice of Availability is published in the Blue Mountain Eagle and Central Oregonian newspapers. To be considered "**timely**" your protest must be postmarked no later than March 25, 1995. Protests must be filed in writing to:

District Manager
Prineville District Office
Bureau of Land Management
P.O. Box 550
Prineville, Oregon 97754.

Sincerely,



Harry R. Cosgriffe
Central Oregon Resource Area



Decision Record for the John Day Resource Management Plan Amendment on Land Tenure Adjustments. (EA 054-5-13)

This planning amendment documents the decision reached by the Bureau of Land Management (BLM) to implement Alternative 3 as described in the Plan Amendment and Environmental Assessment for the John Day Resource Management Plan published October 10, 1994. This amendment divides the BLM managed public lands in Grant County into three zones which direct and define future BLM actions regarding retention or disposal through **exchange** or sale. BLM will proceed with the land exchanges as proposed in the amendment, when the necessary resource inventories and consultations are completed. This includes cultural, fish and wildlife, and threatened and endangered plant and animal inventories. Any tract found to contain critical resources, such as those just listed and which cannot be mitigated, will be dropped from the exchange. Exchanges listed in the plan that are modified to include different tracts than those shown, and any new exchange proposal, will be evaluated through a separate Environmental Assessment.

District Manager Findings and Recommendations

The BLM has analyzed the public comments regarding this plan amendment and determined that the zone descriptions will remain as published in the planning document on October 10, 1994. **Key** comments pertaining to this decision are attached and include **BLM's** response.

In accordance with the Federal Land Policy and Management Act (FLPMA) the following criteria will be used to evaluate future disposal or acquisition opportunities. This list is not considered all inclusive, but represents the major factors to be evaluated.

They include:

1. Threatened or endangered or sensitive plant and animal species habitat.
2. Significant cultural resources and sites eligible for inclusion on the National Register of Historic Places.
3. Wilderness and areas being studied for wilderness.
4. Designated floodplains, wetlands and riparian area.
5. Fish habitat.
6. Nesting/breeding habitat for game animals.
7. Key big game seasonal habitat.
8. Developed recreation sites and recreation access.
9. Municipal watersheds.
10. Energy and mineral potential.
11. Accessibility of the land for public use.
12. Difficulty or cost of administration.
13. Suitability of the land for management by another federal agency.
14. Significance of the decision in stabilizing business, social and economic conditions and schools.
15. Whether private sites exist for the proposed use.

16. Encumbrances.
17. Consistency with cooperative agreements and plans or policies of other agencies.
18. Suitability (need for change in land ownership or use) for purposes including but not limited to community expansion **or** economic development, such as industrial, residential or agricultural development.
19. Areas within National Wild and Scenic River or State Scenic Waterway Boundaries.
20. Visual resources; and
21. Amount of public investment in facilities or improvements and the potential for recovering those investments.

The land ownership adjustment criteria identified above will be considered in land reports and environmental analyses prepared **for** future adjustment proposals.

Transfers to other public agencies will be considered where improved management efficiency would result. Minor adjustments involving Recreation and Public Purposes Act transfers; sales or exchanges or both may be permitted based on a site specific application of the land ownership adjustment criteria.

Land to be acquired by the BLM through exchanges, generally must:

1. facilitate access to public land and resources, or
2. maintain or enhance important public values and uses, or
3. maintain or enhance local social and economic values in public ownership, or
4. facilitate other aspects of the John Day Resource Management Plan.

Exchange of public land under Section 206 of FLPMA requires: (1) A determination that the public interest will be well served by making an exchange; (2) Meet the needs of state and local governments (3) Exchanges must be for equal value but differences can be equalized by payment of money not to exceed 25 percent of the total value of the land transferred out of Federal ownership. Exchanges will be made when it would enhance public resource value and improve land patterns and management capabilities of both private and public lands within the planning area by consolidating ownership and reducing the potential for conflicting land use.

Public land to be sold must meet one or more of the following disposal criteria listed in the FLPMA:

- 1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency; or
- 2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or
- 3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic

development, which cannot be achieved **prudently or feasibly on land** other than public land and which outweigh other public objectives and values, including, but not limited to, watershed and recreation and scenic values, which would be served by retaining the tract in Federal ownership.

Generally, exchanges are the preferred method of disposal but sales will be utilized when:

1. It is required by national policy
2. It is required to achieve disposal objectives on a timely basis and where disposal through exchange would cause unacceptable delays
3. Disposal through exchange is not feasible.

The cost of preparing a tract for sale will also be considered when determining if it will be sold. Public land tracts may be retained when the cost of processing the sale exceeds the value of the land.

The preferred method of selling public land will be by competitive bidding at public auction to qualified purchasers. However, modified competitive bidding procedures may be used when there is no legal public access to a tract, when necessary to **avoid** jeopardizing an existing use on **adjacent** land, or to avoid dislocation of existing public land users.

Public land may be sold by direct sale at fair market value when:

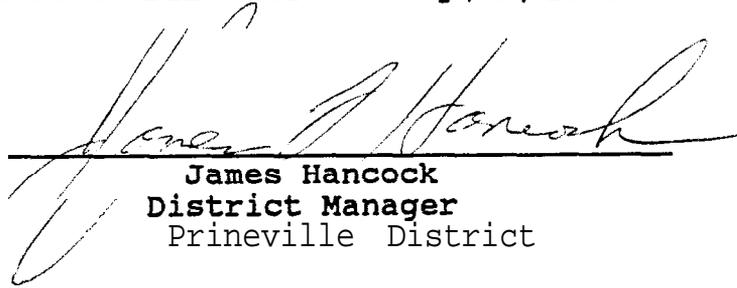
1. Such land is needed by state or local governments and the public interest would be best served by a direct sale.
2. Direct sale is needed to protect equities arising from authorized use.
3. Direct sale is needed to protect equities resulting from inadvertent, unauthorized use that was caused by surveying errors or title defects.
4. There is only one adjacent landowner and no legal public access.

Analysis of the public comments reveals a significant interest in the "small **tract**" known as "**Shangrila**", for both historic and outdoor classroom purposes as well as a water quality monitoring site. Now that the unauthorized occupancy has been resolved, an evaluation of the site for historic purposes can be completed.

If tangible historic values can be demonstrated, BLM may pursue limited development of the site to preserve its historic nature. **BLM** will also begin working with the local school districts to facilitate their use of the site as well as establish a water quality monitoring station.

Public comment also shows a strong desire by the people of **Prairie City** to have the Dixie Creek drainage designated as the **Prairie City Municipal Watershed**. This decision recognizes that desire by adopting Alternative 3 as the amendment to the John Day Resource Management Plan.

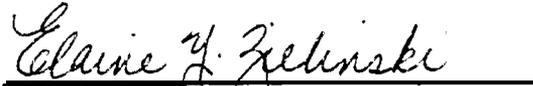
Recommended to the State Director **January 13, 1995.**



James Hancock
District Manager
Prineville District

STATE DIRECTOR APPROVAL

I approve the proposed decision for the John Day Resource Management Plan Amendment and Environmental Assessment for Land Tenure Adjustments as recommended. This document meets the requirement for agency decision-making as provided in **40** CFR 1505.



Elaine V. Zielinski
Oregon State Director

2/2/95
Date

FINDING OF NO SIGNIFICANT IMPACT FOR THE JOHN DAY RESOURCE
MANAGEMENT PLAN AMENDMENT ON LAND TENURE ADJUSTMENTS (EA 054-5-13)

The Bureau of Land Management, Prineville District, has analyzed various alternatives for managing land ownership adjustments within the John Day Resource Management Plan area. The alternatives and associated analysis are described in the Plan Amendment and Environmental Assessment (EA) made available for public review on October 10, 1994. This environmental assessment is hereby incorporated by reference. The options for management direction identified in the EA would assure that no significant adverse impacts would occur to the human environment.

Under the four alternatives analyzed, significant impacts on the quality of the human environment would not occur based on the following considerations:

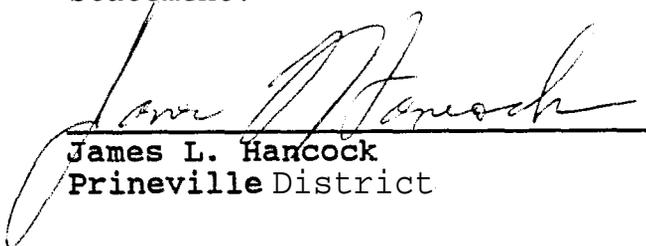
- Analysis indicated no significant impacts on society as a whole, the affected region, the affected interests, or the locality.
- Public health and safety would not be significantly affected.
- There are no flood plains, wild and scenic rivers, prime or unique farmlands, or known paleontological resources within the area that would be negatively affected by the plan amendment. Wetlands will be protected in accordance with Executive Order 11990 and riparian areas in accordance with the 1987 Bureau wide policy.
- The alternatives are not related to other actions with potential for cumulatively significant impacts to the important and relevant resource values for the area involved.
- Cultural resources on or eligible for the National Register of Historic Places would not be affected. Native American religious sites would not be affected.
- The alternatives would not affect endangered or threatened species or their habitat determined to be critical under the Endangered Species Act of 1973.
- The alternatives do not violate federal, state and local law requirements imposed for environmental protection. There are no known inconsistencies with officially approved or adopted federal, state or local natural resource related plans, policies or programs.
- Adverse impacts identified are minimal. Continued resource monitoring and requirements for site specific analysis or inventory of each proposed sale or exchange would ensure that no significant adverse impacts occur.
- As needed, appropriate management would be instituted to protect important natural and cultural resource values. Impacts to threatened or endangered species habitat or cultural resources,

which could not be mitigated, would result in the land being retained in public ownership.

-The alternatives would not significantly alter other approved land use allocations or resource management directions in the existing John Day Resource Management Plan.

FONSI Determination

On the basis of the information contained in this Environmental Assessment and all other information available to me as summarized above, it is my determination that none of the 4 alternatives constitute a major federal action significantly affecting the quality of the human environment (a finding of no significant impact). Therefore, an environmental impact statement is unnecessary and will not be prepared. In addition, the amendments to the John Day River Resource Management Plan do not substantially affect other resource programs to the extent that the District would initiate a Resource Management Plan/Environmental Impact Statement.



James L. Hancock
Prineville District

JANUARY 13, 1995
Date

Response to comments on the John Day Resource Management Plan Amendment and Environmental Assessment for Land Tenure Adjustments.

The two public comment periods held in 1994 resulted in numerous comments, both written and verbal, on a variety of topics. The plan was modified on many occasions to reflect these comments. Virtually all changes made in the plan were made after the first comment period. The high level of support expressed for the Preferred Alternative in the second comment period shows these changes were well received. Most of the comments and questions received during the second comment period were to obtain clarifications and not to change the plan.

The following comments and questions were received on the October 1994 John Day Resource Management Plan Amendment on Land Tenure Adjustments and public meeting held November 8, 1994. Some individual questions are addressed separately, but most questions or comments of a similar nature have been grouped together and responded to.

Question

What were the criteria for evaluating comments submitted prior to the completion of the draft: quality or quantity?

Response

Comments were evaluated on the basis of their relevancy to land tenure adjustment, existing law, potential impacts to critical resources and consistency with local land use plans.

Question

Why is the Dixie Creek area not considered Zone X3 in the Preferred alternative as in Alternative #1, since two-thirds of the comments received were in favor of privatizing it? This is backed by a 1984 vote in which two-thirds of the voters favored protecting the Shangrila Mill site.

Answer

The 1984 vote only concerned the five acre Shangrila site. The plan concerns itself with the entire watershed. The two-thirds of the comments refers only to the written comments received during the first comment period. The Prairie City City Council voiced its support for retention as a municipal watershed as did the Grant County Judge. There is also broad based support from numerous interest groups for the retention of anadromous fish habitat in the Dixie Creek watershed. A through analysis of public comment shows strong support and a clear majority preference for Alternative 3.

Question

How will property taxes on Shangrila be replaced now that it has passed into public ownership?

Answer

The question is incorrect and misleading in its statement that the land has passed into public ownership. The land in question has never been out of public ownership and the buildings became public property when the Small Tract lease (which authorized the prior occupant to live there) expired. Once the lease had expired, no taxes should have been collected, as the property was owned by the Federal government. After extensive time in administrative and Federal Courts the unauthorized occupant was removed by Federal Court order. The county has and will continue to receive payment in lieu of taxes (PILT) for this property just as it does for all other federal land within the county. It should also be noted that this payment was recently increased and is scheduled to double over the next **5** years.

Statement

It was stated that the Shangrila Mill site is a part of the cultural heritage of Grant County and suggested that the arrastra be put back on site and a plaque erected.

Comment

BLM recognizes the historic use of this site and in fact has been made aware of an interest to use it as an outdoor classroom. Establishing a plaque which recognizes the past use of this site will be considered and BLM will work with the local school districts to facilitate their **use** of the site as an outdoor classroom.

Question

What was the most frequent comment?

Answer

The most frequent written comment received during the first comment period was received as form letters stating a preference for alternative **#1**. Substantial written and verbal comments favoring a combination of consolidation of public lands with high public values and disposal of scattered isolated tracts were also received. During the second comment period more written and verbal support was received for Alternative 3 than any other alternative.

Question

Can landowners who surround a tract of public land buy the land without competition? This was brought up while a comment was being made concerning trespass on private land by people trying to get to isolated tracts of public land.

Answer

If the tract meets the criteria for disposal as identified in the planning amendment it would be possible. However, in most cases direct sales will not be considered because the cost of preparing them for sale often exceeds the value of the tract being sold. By regulation **BLM** can sell the land directly, sell it through a competitive bid process or sell it by competitive bid while allowing the adjoining landowner to match the high bid.

Question

If someone wants to purchase a **BLM** parcel, are adjoining landowners notified and do adjoining landowners have preference over other land purchasers?

Answer

All adjoining land owners are notified by registered mail of any tract of public land bordering their property that is being disposed of either by sale or exchange. Anyone holding a grazing lease or permit must be given a two year notice on the lease or permit being terminated. The permittee or lessee may waive the two year requirement.

BLM does give preference to adjoining land owners in both sales and land exchanges. If the land is sold, the sales are structured to give preference to the adjoining landowners unless the parcel of land has public road access. The **BLM** attempts to avoid creating situations where an outside party is brought in to the **BLM** tract and an access problem is created because that party would have to cross private land to get to the piece of public land they just acquired.

Question

What issues have been raised regarding water rights?

Answer

Comments were made regarding the appraisal of water rights and the acquisition of water rights. Some people commented that they did not believe the **BLM** should be acquiring water rights. Generally speaking the **BLM** is not interested in acquiring land for the purpose of acquiring water rights. However, water rights generally

come with the land and may be part of a proposal brought to **BLM**. When a water right is included in the exchange, we manage it to meet Resource Management Plan (RMP) objectives and direction, ensure consistency with local land use plans and comply with state law.

Question

Will the BLM appraise water rights separate from the land associated with them?

Answer

Generally land is appraised with any water right accorded to it and not separately. Land with water rights is generally worth more than land without and the value of the water right is therefore reflected in the appraisal of the land.

Question

Where does Prairie City draw its domestic water from?

Answer

BLM was informed that a subsurface source near the county road that runs east towards the Rico Ranch, is the source of Prairie City's water. The well is replenished by waters collected in the Dixie and Standard Creek watersheds.

Question

What do the zones mean and what can be done with land in Zone 2?

Answer

The zoning concept is used to categorize land for retention and disposal. The current John Day Resource Management plan (1985) does not identify which tracts can be considered for exchange and has a very small list of land identified for disposal. Presently the BLM cannot do land exchanges in Grant County because the current plan does not identify land that can be exchanged. When the amendment has been completed, BLM will use the zones to respond to the various exchange proposals it receives.

Land found in zone 2 generally will be retained. However, there are areas of scattered and isolated tracts that could be considered for disposal through land exchange,

Question

What would it take to adjust the zoning lines and can we modify the zone 1 line on Rudio Mountain? The land owner is not interested in trading any of his land found in zone 1 and wishes to acquire some of the public land found within this zone.

Answer

A sound justification is needed to adjust the lines. Many of the zone boundaries shown in the plan amendment published October, 10, 1994 were adjusted as a result of public comment received during the first comment period in February and March of 1994.

The zone 1 on Rudio Mountain has been left as originally shown in Alternative #3 largely for timber management purposes. It is a manageable unit that BLM does not wish to dispose of. However, that does not preclude the possibility that land could be traded within the zone. Land exchanges, are made only with willing landowners. If the adjoining landowner does not want to trade, then no exchange will be done.

Question

How many people are on the team which determines the zone boundaries and are they all within **BLM**?

Answer

The review team working on the plan amendment consists of all resource specialists and managers in the Upper John Day River area. This group totals approximate 10 **people**, all employed by the Bureau of Land Management.

Question

Who pursues exchanges within Zone #1 and are exchanges evaluated on their own merits?

Answer

Exchanges are land owner initiated and driven, so any exchange of land within zone #1 would be with a land owner whose land is found within that zone. All exchanges are evaluated on the basis of the socio-economic factors and resource values involved in the exchange.

Question

Will Zone #1 designation affect private land sales between private land owners, and why is the BLM trying to pick up farm land in Zone #1 from Monument to Kimberly?

Answer

The zone #1 will not affect land sales between private land owners. The intent of the zone #1 classification is to identify public land that will not be disposed of. (It should be noted that land within zone #1 can be exchanged for other land within zone #1.) It is not identifying farm land that the BLM is trying to acquire. BLM is not trying to acquire farm land in Zone #1 from Monument to Kimberly.

Statement

Farm lands should not be included in Zone #1.

Comment

It would be impractical to try to draw the zone line around each piece of farm land along the South Fork of the John Day River (The area the question was referring to). The intent is to identify public land that will be retained, not to acquire farm land.

Question

Why is the upper South Fork of the John Day River and lands above Izee Falls included in Zone #1 since anadromous fish cannot pass the falls?

Answer

This segment of the river is designated Wild and Scenic and is not something that would be traded away, therefore it is included within Zone #1.

Question

How can bottom land be exchanged for uplands when their values are obviously different and who assigns the values to these lands?

Answer

Exchanges are completed on a value for value basis, not acre for acre. All tracts are appraised by a certified real estate appraiser who compares the land to be exchanged to similar **property**, sold in the same area. These actual sales are then used to determine the value of the tracts being offered in exchange.

Question

How were the exchange proposals in the plan amendment developed?

Answer

The owners of the private land offered for exchange came to **BLM** with the various proposals in the plan amendment.

Question

Can public land be acquired and used for the purpose of public schools?

Answer

Through the Recreation and Public Purpose Act (R@PP) a school district could acquire land for its schools. This is done by submitting an application along with a plan of development. If the project is completed as designed in the plan of development, the school district can purchase the land at a reduced rate. Prior to that the schools would pay rental on the property.

PUBLIC STATEMENT

The Dixie Creek watershed is the source of Prairie City's municipal water supply and we request that the management practices used will be those which especially provide for the protection of the water quality of the watershed. It is also requested that the Dixie Creek drainage be formally designated as the Prairie City Municipal Watershed and that it be managed in accordance with that formal designation.

BLM COMMENT

The BLM **recognizes** Prairie City's need for a municipal water supply and while the plan is intended to deal only with land tenure adjustments, it is clear that public land within the Dixie Creek watershed would need to be retained to meet these goals.

PUBLIC STATEMENT

We agree with the discussion under Fish/Watershed Resources in Chapter III requesting that the Dixie Creek watershed remain in public ownership.

BLM COMMENT

Alternative 3, the Preferred Alternative will meet this request.

QUESTION

It appears that exchange #6 is a land grab and that too much **public** land is being traded for a little piece of private land along the Middle Fork of the John Day River.

ANSWER

Many exchange proponents realize that the BLM will drop land out of consideration for exchange after BLM has 'completed' the required field work and inventories to comply with NEPA and other laws and regulations. Therefore many proponents submit a list of public land larger than is necessary to equalize value so that after the BLM has dropped tracts out as a result of its inventory work, there is still enough land left to continue to work towards an exchange. Lands are exchanged on a value basis, so acreages of private and public land exchanged may not be equal.

QUESTION

With regards to the seven proposed exchanges, what will be the **BLM's** response if different tracts other than those identified in the plan are eventually chosen for exchange?

ANSWER

If an exchange identified in the plan amendment cannot be completed by using the lands described in the plan, the BLM is required to prepare a separate Environmental Assessment for that exchange.

QUESTION

Can Zone 1 be expanded along the corridor of the North Fork of the John Day River and also at the confluence of the Middle Fork and the North Fork, so that it includes the public land in the area of Slick Ear Mountain?

ANSWER

After reviewing this request it was decided to leave the lines where they are. There are two main reasons for doing so. The first is that public comment is highly supportive of Alternative #3 as it is and the second is that large Zone 1 areas can make it difficult to complete valuable exchanges. Land within Zone 2 will also be retained, but offers greater flexibility when considering exchange proposals.